

K343SCHF

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

S2 17 Cr. 548 (PAC)

6 JOSHUA ADAM SCHULTE,

7 Defendant.

Trial

8 -----x
9 New York, N.Y.
10 March 4, 2020
11 9:20 a.m.

12 Before:

13 HON. PAUL A. CROTTY,
14 District Judge
15 -and a jury-
16 APPEARANCES

17 GEOFFREY S. BERMAN
18 United States Attorney for the
19 Southern District of New York
20 BY: MATTHEW J. LAROCHE
21 SIDHARDHA KAMARAJU
22 DAVID W. DENTON JR.
23 Assistant United States Attorneys

24 SABRINA P. SHROFF
25 Attorney for Defendant
-and-

DAVID E. PATTON
Federal Defenders of New York, Inc.
BY: EDWARD S. ZAS
Assistant Federal Defender
-and-

JAMES M. BRANDEN

Also Present: Colleen Geier
Morgan Hurst, Paralegal Specialists
Achal Fernando-Peiris, Paralegal
John Lee, Litigation Support
Daniel Hartenstine, CISO, Department of Justice

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Deliberations

1 (Trial resumed; jury not present)

2 THE COURT: We're still missing Juror No. 4.

3 What is the status of the request that we got at 3:45
4 last night, Court Exhibit 11? That's the one with the four
5 questions.

6 MR. LAROCHE: Yes, your Honor. First, the one we
7 agree on, number four, the parties agree there is nothing
8 responsive to that in the record.

9 One, two, and three we just have slight variations
10 where we're at in terms of transcripts. So I'll start with
11 one. For one, this refers to a question about locking the
12 vault.

13 The parties agree on this one to refer to the jury to
14 look at Exhibit 105, which are the defendant's badge records
15 for 2016. the parties also agree to refer to a portion of
16 Mr. Leedom's testimony. But the government proposes slightly
17 more of that testimony than the defense. We provided the two
18 differences to your Honor.

19 THE COURT: The defense proposal is?

20 MR. LAROCHE: We both refer to the same portion of
21 Mr. Leedom's testimony. The defense cuts it off slightly
22 earlier than the government does.

23 So I believe at the end, Mr. Leedom is testifying
24 about the defendant's badge records, and what the arm lock
25 means. And the government proposes including the information

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1 on the second page where he's asked to explain the badge
2 records relating to the defendant.

3 MR. ZAS: Judge, I can just explain the objection we
4 have.

5 THE COURT: Okay, Mr. Zas.

6 MR. ZAS: The question is about generally whether
7 there is evidence that these two dates were the only two times
8 in 2016 that Mr. Schulte left the vault last. So we're in
9 agreement with the government about giving them the badge
10 records, and they'll see for themselves how many times it was.

11 Then we have this portion that just explains what it
12 means to arm and disarm the vault.

13 But then, when Mr. Laroche asked the question on page
14 1100 of the transcript, it starts to focus --

15 THE COURT: Let me get to 1100.

16 MR. ZAS: Yes, sorry.

17 THE COURT: Okay. I'm at 1100 for both.

18 MR. ZAS: On 1100, we would end at line 4.

19 THE COURT: Yes.

20 MR. ZAS: Because then it goes on to focus on a
21 specific date and time that Mr. Schulte armed the vault. And
22 we don't think -- that's not what the jury is asking. There is
23 no reason to highlight the one specific time that the
24 government wants to focus on there.

25 THE COURT: All right. On one, is there evidence that

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1 April 18 and 20 were the only two times in 2016 that Schulte
2 left the vault last.

3 We're going to give them Exhibit 105?

4 MR. ZAS: That's correct.

5 THE COURT: Which is the records, the badge records
6 for 2016.

7 MR. ZAS: Yes.

8 THE COURT: And then as for Mr. Leedom's testimony,
9 I'm going to, with respect to that, I'm going to allow from
10 1099:10, all the rest of the page to 25 to page 1100:1-4.

11 MR. ZAS: Your Honor, we just have one objection to
12 what you've just said. Just on page 1099, the reason we took
13 out lines 10 through 16 was just there seems to be an answer
14 that's really non-responsive about a VM folder and a different
15 file that was deleted. And we just thought it's not responsive
16 and it just causes more confusion.

17 THE COURT: It is the lead in to the badge records
18 explanation. I assume that's --

19 MR. LAROCHE: Yes, your Honor.

20 THE COURT: -- that's why you want it.

21 MR. ZAS: Okay.

22 MR. LAROCHE: Yes, your Honor.

23 THE COURT: It is a fuller response.

24 MR. ZAS: We just have one more thought.

25 THE COURT: Okay.

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1 MR. ZAS: You recall that we're giving the jury also a
2 redacted portion of Government Exhibit 105.

3 THE COURT: Yes.

4 MR. ZAS: From yesterday that just shows April 20
5 entries.

6 THE COURT: Yes.

7 MR. ZAS: We asked the government, just so the jury is
8 not confused, to label that as GX 105 Redacted, which they've
9 done for us, but it is a very small sticker. And we just want
10 to make sure the jury doesn't get confused. So if your Honor
11 could explain to them that in response to their, I guess it was
12 the last note, we're giving them Government Exhibit 105 with
13 redactions, and we're also giving them this morning the
14 complete version of Government Exhibit 105, so they're not
15 confused. Because they look identical from the stickers.

16 THE COURT: So, that really answers two questions. It
17 answers the one question that they put to us yesterday, then it
18 answers question number one on court exhibit 11.

19 MR. ZAS: That's right.

20 THE COURT: All right. What's this about the
21 Altabackups mean?

22 MR. LAROCHE: Yes, your Honor. So the parties just
23 have different proposals in terms of transcript cites. So I'll
24 give you the government's first, and we provided the excerpts
25 to you this morning. We would propose Mr. Weber's testimony

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1 from 254:15 through 256:15. We would also propose Mr. Leedom's
2 testimony from 950:1 through 953:23.

3 The defense has agreed on Mr. Weber's testimony, but
4 to a smaller portion. Only 254:20 to 255:1.

5 THE COURT: Mr. Zas?

6 MS. SHROFF: Can you just give us what you gave the
7 Court?

8 MR. ZAS: Your Honor, as I read the question, question
9 two, especially because the jury has the word "mount" in
10 quotation marks, I think they're confused as to what the
11 meaning of that term is. So we tried to focus on that
12 confusion. And we think that our proposal, which starts on
13 page 254 of the transcript, starts with the question, "Are you
14 familiar with the term mount point?"

15 THE COURT: Just a minute. I only have one
16 defendant's proposal that deals with the first dispute. I
17 don't have anything from you on two, three and four.

18 MR. LAROCHE: Your Honor, I'll pass up the defense's
19 and ours so you have it for Mr. Weber.

20 THE COURT: I've got number two before me now,
21 Mr. Zas.

22 MR. ZAS: So our proposal is beginning on page 254, we
23 would give the jury, starting on line 20, with the question
24 that starts, "Are you familiar with the term 'mount point'?"
25 Then the answer there gives a succinct answer, and we would

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1 stop it on line 1 of 255. The remainder starts to get into
2 what the defendant allegedly did and where various points were
3 located. And it becomes kind of a long colloquy that goes
4 beyond what the jury's asked for.

5 THE COURT: Mr. Laroche.

6 MR. LAROCHE: Your Honor, I think the question asks
7 specifically about mounting the Altabackups. The defense's
8 proposal relates only to just mount points generally. What
9 we've included relates specifically to mounting the
10 Altabackups, which we believe is directly responsive to what
11 they've asked for. And it's only, at least with Mr. Weber, two
12 more pages.

13 And then we've also separately provided Mr. Leedom's
14 testimony relating to Altabackups and what the mount point on
15 the Altabackups means, which is specifically what they've
16 asked. "What does mount the Altabackups mean." Not just a
17 mount point generally.

18 THE COURT: Looking at this, Mr. Zas, there is
19 continuing references in the government's proposal of Weber,
20 starting at page 5, about mount commands and mount points.
21 Mount point -- it seems to be so, now, this is Weber. You say
22 there's other material as well, Mr. Laroche?

23 MR. LAROCHE: Yes, your Honor. I'll pass it up right
24 now. This is Mr. Leedom.

25 MR. ZAS: Your Honor, if you are inclined to go the

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1 government's way on this point and put in the portion, the
2 additional portion they want from Mr. Weber's testimony, we
3 would have a separate request for some of the cross also to
4 make it complete.

5 THE COURT: Yes.

6 MR. ZAS: Should we give that to you now?

7 THE COURT: Yes, please.

8 MR. LAROCHE: We're fine with that. We proposed that
9 last night. So we are fine with that.

10 MS. SHROFF: Mr. Gonzalez, can we borrow your hard
11 copy of 487?

12 THE DEPUTY CLERK: What date is that?

13 MS. SHROFF: The first witness.

14 (Pause)

15 THE COURT: On request number one, we're going to give
16 Mr. Leedom's testimony starting on page 1099:10, going over to
17 page 1100:4. That's the response to number one.

18 Number four, the response is there's nothing in the
19 record that enables us to respond to this inquiry.

20 Where are we on two?

21 MR. LAROCHE: I believe we have agreement, your Honor.

22 THE COURT: Okay.

23 MR. ZAS: Sorry it took so long, Judge.

24 THE COURT: That's all right.

25 MR. LAROCHE: So, your Honor, we at least have

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1 agreement as to Weber at this point.

2 THE COURT: Okay.

3 MR. LAROCHE: 254:15.

4 THE COURT: 254:15.

5 MR. LAROCHE: To 256:15.

6 THE COURT: Okay.

7 MR. LAROCHE: And we have cross for Weber, 485:9 to
8 487:24. And then on redirect, your Honor, the parties agree
9 521:10 through 521:22.

10 THE COURT: Okay. Number three?

11 MR. LAROCHE: Your Honor, we just have one more
12 suggestion on number two for Mr. Leedom.

13 THE COURT: Okay. Yes.

14 MR. LAROCHE: Your Honor, on Mr. Leedom.

15 THE COURT: Yes.

16 MR. LAROCHE: We have a small portion that we agree
17 on. 950:17.

18 THE COURT: Yes.

19 MR. LAROCHE: Through 951:12.

20 THE COURT: Any cross or redirect? 950:17 through
21 951:12; is that right?

22 MR. LAROCHE: That's right, your Honor. It is a very
23 limited portion.

24 THE COURT: That takes care of two. What about three?

25 MS. SHROFF: No, no.

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1 MR. ZAS: Your Honor, we're just checking the cross to
2 see if there is anything that should be added just on that
3 portion you just referred to.

4 THE COURT: All right.

5 MR. ZAS: We have nothing to add on that question.

6 THE COURT: Okay.

7 MR. LAROCHE: On the third, your Honor, both parties
8 agree to portions of Mr. Leedom's testimony, just different
9 lengths of those portions. So I'll give you the government's
10 first.

11 So 984:4 through 989:1 is the government's. The
12 defense has 985:9 through 17.

13 The government reads this question, "What does create
14 data store mean" to refer to the discussion of a particular
15 exhibit that Mr. Leedom addressed and how it relates to the
16 backups. So we included that full discussion, which relates to
17 what a data store is.

18 MR. ZAS: Our position on this one is, this is one of
19 those rare instances where there is something very succinct and
20 very responsive to the question. It is right on page 985, and
21 the question is: "Let's start first with what is a NAS data
22 store." And he answers it right there. And everything else
23 goes off on other more confusing forensic stuff. So we think
24 this one is just straight answer to the jury's question.

25 MR. LAROCHE: Your Honor, we obviously disagree. We

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1 feel that the surrounding context is important to understanding
2 what it means to create a data store, so we have just proposed
3 additional language.

4 THE COURT: I think the answer at 985:9-17, let's
5 start first what is a data store. So I'll first explain a data
6 store is simply going down to line 17.

7 MR. LAROCHE: Your Honor --

8 THE COURT: I'm going to send that into the jury.

9 MR. LAROCHE: Understood. I think, and just our
10 thought process there was they asked specifically for create
11 data store. Not what is a data store, which is why we included
12 more.

13 THE COURT: All right. The jury is here now. While
14 we're waiting, we've got two more jury notes. What I would
15 propose to do is to call in the jury and give them the
16 information we have now, so we are at least current as of
17 yesterday's request. Then pick up the requests from this
18 morning.

19 MR. LAROCHE: Yes, your Honor.

20 MR. ZAS: Seems to be a very inquisitive jury, your
21 Honor.

22 THE COURT: You can't satisfy them.

23 (Jury present. Time noted 9:50 a.m.)

24 THE COURT: Good morning. This will bring us up to
25 date as to the questions as of close of business yesterday

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1 afternoon.

2 So, Court Exhibit 9, which we got at 3 o'clock
3 afternoon says: "Can we please have simplified badge
4 times/formats for Schulte on 4/20/16 in a format similar to GX
5 115."

6 We're going to send in an extract from Government
7 Exhibit 105. The extract consists of information on pages 13
8 and 14 of GX 105, and it's marked GX 105 Redacted, which is
9 just the entries for Mr. Schulte. That takes care of the
10 request as of 3 o'clock.

11 We received a second request at 3:37, and your
12 foreperson was kind enough to say "for tomorrow." So, tomorrow
13 is here. "Is there evidence that April 18 and 20 were the only
14 two times in 2016 that Schulte left the vault last?"

15 As to that we're going to provide you -- we're already
16 providing you with Exhibit 105, which is in fact the records
17 for the badge records for 2016. So, you can check it yourself.
18 In addition, we are going to provide testimony from page
19 1099:10 through page 1100:4.

20 Question number two: "What does mount the Altabackups
21 mean?"

22 We're going to provide extracts from Mr. Weber's
23 testimony on direct, pages 254:15 to 256:15, cross-examination
24 on the same topic from page 485:9 through 487:24, and redirect
25 from page 521:10 through 522:22. And a portion of Mr. Leedom's

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1 testimony from 950:7 to 951:12.

2 With regard to question number three: "What does
3 create data store mean?"

4 We're going to provide you with an excerpt from
5 Mr. Leedom's testimony, page 985:9-17.

6 And four: "When someone logs out of a virtual
7 machine, what happens to the log files from that session?"

8 The answer to that is there's no answer in the record.
9 You'll have to just rely on the transcript and the testimony
10 dealing with the virtual machines. But there's no answer that
11 we can provide you.

12 That takes care of the jury notes as of last night.
13 We have two from this morning. We're going to work on those
14 now, and you can return to your deliberations. Thank you very
15 much.

16 (Jury resumes deliberations. Time noted 9:54 a.m.)

17 THE COURT: The jury note which came in at 9:30 this
18 morning says: "Can we have a transcript of Michael Berger's
19 testimony. Can we also have a transcript of Michael's
20 testimony."

21 MS. SHROFF: Sure, why not.

22 MR. LAROCHE: That's fine, your Honor.

23 THE COURT: Okay.

24 MR. LAROCHE: We'll prepare it the same way as we did
25 David's testimony with respect to objections.

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1 THE COURT: Okay. The next note is -- actually, the
2 next note was the first note we received this morning at 9:16.
3 "All of us feel that Ms. Thompson," that's Juror No. 4, "is not
4 respecting the process. She is late every day, and during
5 deliberations has not been participating in the group
6 discussions. Rather she's been digging through the evidence on
7 her own. Even when asked to redirect her attention, she
8 continues on her own path. We're concerned about how this is
9 playing out within the group and her attitude towards the other
10 jurors."

11 I'll show you the originals. Any suggestions?

12 MR. LAROCHE: Your Honor, we'd request a little time
13 to discuss this internally and get back to chambers very soon
14 with a position.

15 MR. ZAS: I think our request is similar. I know
16 there is a Second Circuit case where the accusation was that a
17 juror refused to deliberate or something along those lines, so
18 that might shed some light on what's tolerable and what is not.

19 THE COURT: Okay. I have a modest proposal, and that
20 is to read them again my instructions, which talks about the
21 duty to cooperate with one another. Of course I welcome
22 whatever suggestions you have. But the jury charge which you
23 have at page 56 is your duty as jurors to consult with one
24 another and to deliberate with a view towards reaching an
25 agreement. You have to decide the case for yourself. It goes

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1 on from there.

2 As an initial thing, that's what I would suggest. But
3 I welcome your suggestions.

4 MR. LAROCHE: We have no objection to doing that now.
5 I think we would still go back and look at the case law, but I
6 think that is a fine approach right now, your Honor.

7 THE COURT: Why don't we wait. How long is it going
8 to be?

9 MR. ZAS: Not long. I would suggest just waiting, let
10 us take a quick look at the case law and see, I mean, of course
11 the instruction is proper. I'm just not sure it should be done
12 now.

13 THE COURT: Fair enough. How long do you want?

14 MR. ZAS: No more than an hour, Judge.

15 THE COURT: An hour, okay.

16 MR. LAROCHE: That's fine.

17 THE COURT: We'll get together at 11 o'clock then
18 unless there is another note in the meantime.

19 MR. KAMARAJU: Thank you, your Honor.

20 (Recess pending verdict)

21 (Jury not present)

22 THE COURT: Okay. Have we sent in the testimony of
23 Mr. Berger and Mr. Michael?

24 MR. LAROCHE: Yes, we have copies of their testimony
25 here ready, your Honor.

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1 MS. SHROFF: Well, actually, your Honor, we have an
2 issue with the -- on Mr. Berger's testimony.

3 THE COURT: What's the issue?

4 MS. SHROFF: So, your Honor, I think Mr. Berger was
5 about to be crossed on the issue of what was in the encrypted
6 folder on Mr. Schulte's drive at the house. At the
7 government's -- I think, it wasn't me who did the cross. So
8 I'm told that the government informed Mr. Branden that should
9 he cross on that point, information about the pornography that
10 was on the encrypted file would come out. So Mr. Branden
11 didn't cross on that point.

12 Mr. Branden can speak to this issue. It's not my
13 issue to deal with. But, so, anyway --

14 MR. BRANDEN: I can continue, Judge, if that's more
15 helpful. Ms. Shroff has very stated this accurately. So then,
16 a corrective measure between the government and the defense was
17 worked out so that I would ask Special Agent Evanchec --

18 MS. SHROFF: That's not what happened. Government
19 asked Evanchec.

20 MR. BRANDEN: The government asked Evanchec and we
21 asked Evanchec on cross whether there was any NDI found in the
22 encrypted portion of the computer.

23 So I didn't ask those questions of Berger because I
24 was told that that would, in the government's view, open the
25 door. So we would like to include those pages from Evanchec to

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1 round out the Berger testimony that --

2 THE COURT: We have a request from the jury for
3 Mr. Berger's testimony and Michael's testimony. That's what we
4 have. We don't have any request for somebody else's testimony.
5 So, I don't propose to respond to this question by giving them
6 something they didn't ask for.

7 So, I'd ask that the Berger testimony and the Michael
8 testimony be sent into the jury room. David, send it in.

9 Court Exhibit 12. Mr. Laroche?

10 MR. LAROCHE: I believe the parties are in agreement
11 that we would adopt your Honor's proposal of rereading the
12 specific portions of the jury charge that relates to the
13 deliberations and working together. We think that is a
14 sufficient remedy.

15 I think both parties have identified the same Second
16 Circuit cases, Thomas and Baker, and we think that would be an
17 appropriate step at this point.

18 MR. ZAS: Your Honor --

19 THE COURT: Should I read it to them or just direct
20 them to -- they have the instructions in the jury room.

21 MR. ZAS: Your Honor, I think we would leave it up to
22 your Honor's discretion. Just one point. I think there might
23 be a question of the timing of this instruction. I don't think
24 any of us know for sure whether the juror referred to in the
25 note is even aware of the note. So, our concern is we don't

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1 want anyone to feel that they are being criticized or targeted
2 if she doesn't already know about the note.

3 So, the question is really do you do it now or do you
4 just sort of do it in a more maybe innocuous way at the end of
5 the day when you give them their instructions before going home
6 or when the next note comes.

7 It would be a little different from your normal
8 practice when you actually read them what they've asked and
9 respond. We don't think that would be appropriate to actually
10 read it, because this juror may not know --

11 THE COURT: Right.

12 MR. ZAS: -- that they've advised you.

13 THE COURT: What's your advice or recommendation with
14 regard to reading it to them or just citing it to them at page
15 59 or whatever the page is?

16 MR. ZAS: Your Honor --

17 THE COURT: One of the complaints is this juror's
18 supposedly always late. I could certainly remind them we can't
19 start deliberation until everybody's here.

20 MR. ZAS: Yes, we have no objection that. I think
21 we're fine with you reading it. But we prefer at maybe the
22 next note that comes out.

23 THE COURT: Or at the end of the day.

24 MR. ZAS: Or at the end of the day.

25 MR. LAROCHE: That's fine. We prefer you read it as

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1 well, and we're fine on the timing as proposed.

2 THE COURT: Do you want just the duty to deliberate?

3 MR. LAROCHE: That's what we identified, your Honor,
4 starting on page 56 going to 57.

5 THE COURT: All right. Thank you very much.

6 MR. LAROCHE: Thank you, your Honor.

7 (Recess pending verdict)

8 (At 11:15 a.m. a note was received from the jury)

9 THE COURT: We have a note from the jurors, note we
10 marked as Court Exhibit 14.

11 "(1) Can we please have testimony from Richard
12 Evanchec. (2) What testimonies covered GX 1305-8 and GX
13 1305-9. Can we please have transcripts about that."

14 MR. KAMARAJU: Your Honor, so we'll prepare Special
15 Agent Evanchec's testimony the same way and just search for all
16 the testimony about those two exhibits.

17 THE COURT: Do you want me to call the jury to tell
18 them we'll comply with their note?

19 MR. KAMARAJU: I think we should tell them we'll give
20 it to them. It will also give your Honor an opportunity to
21 read the instruction.

22 THE COURT: I'm going to do that at the end of the
23 day.

24 MS. SHROFF: Your Honor, I'm sorry, I didn't hear what
25 the Court said. But Mr. Schulte is not here.

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1 THE COURT: Okay, we'll wait for Mr. Schulte.

2 MS. SHROFF: So, should we gather what they want on
3 the note and then bring them out? It seems fairly
4 straightforward get Mr. Evanchedec's testimony and do a quick
5 search for 1305-8 and 9.

6 THE COURT: If we have Evanchedec's testimony -- do we
7 have Evanchedec's testimony here?

8 MS. SHROFF: We just have to redact the objections.

9 THE COURT: So we have work to do.

10 MS. SHROFF: It won't be that long. It seems,
11 Ms. Hurst seems to be quite rapid at it, so I don't think it
12 would be more than 15 or 20 minutes.

13 THE COURT: All right.

14 MR. ZAS: It looks like those exhibits are admitted
15 through a stipulation. It seems like it comes through a
16 stipulation. I'm not sure there is any testimony about it.

17 MR. LAROCHE: Your Honor, part two, the testimony I
18 believe that covers that is Mr. Berger's, which they're
19 getting.

20 THE COURT: Mr. Berger?

21 MR. LAROCHE: Yes. That was part of his presentation.
22 We'll confirm that, but we know for a fact it's in his
23 presentation.

24 THE COURT: Okay. Mr. Zas, you think there is a
25 stipulation that covers 1305-8 and 9?

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1 MR. ZAS: Based on our search it seems that's how it's
2 admitted into evidence. We are just not sure if Mr. Berger
3 referred to those particular exhibits with his slides. That's
4 what we are trying to figure out.

5 MR. KAMARAJU: He did, your Honor. Mr. Berger
6 testified about those particular exhibits, so they have that.
7 We'll confirm there is no other witness who talked about it.
8 Then I think that should be entirely responsive.

9 THE COURT: Okay.

10 MR. KAMARAJU: I'm just going to get Special Agent
11 Evanchec's testimony so we can have it for the jury.

12 THE COURT: All right. We're waiting for Mr. Schulte
13 now.

14 (Defendant present)

15 THE COURT: Is it all right to call the jury in now,
16 Ms. Shroff?

17 MS. SHROFF: If the Court wants, your Honor. If you
18 don't want to wait for the Evanchec testimony, sure. It's up
19 to you.

20 THE COURT: I'll call them now and tell them we'll
21 give them the information they want so they get back to
22 deliberating.

23 MS. SHROFF: Did the Court want to tell them you'll be
24 sending in Special Agent Evanchec's testimony and that, number
25 two, they already have the testimony of Mr. Berger?

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1 THE COURT: Exactly.

2 MS. SHROFF: If there is anything more we can
3 supplement later, you don't need to hold them up if you don't
4 want.

5 THE COURT: Bring them in.

6 (Jury present. Time noted 11:36 a.m.)

7 THE COURT: We have your note of quarter after 11.
8 "Can we please have the testimony from Richard Evanchec."
9 We're preparing that testimony now and we'll send the
10 transcript in.

11 Question number two: "What testimonies covered GX
12 1305-8 and GX 1305-9. Can we please have transcripts about
13 that."

14 The only testimony about these two exhibit was in
15 Mr. Berger's testimony. You already have the Berger testimony.

16 So, that takes care of those requests. You can resume
17 your deliberations. Thank you.

18 (Jury resumes deliberations. Time noted 11:38 a.m.)

19 MS. SHROFF: Your Honor, is it the Court's policy not
20 to allow them outside during the day, the jurors?

21 THE COURT: No. I haven't said anything about it.

22 MS. SHROFF: No, I didn't know.

23 THE COURT: If they want to take a break, they can
24 take a break.

25 MS. SHROFF: I don't know. Some judges don't let them

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1 leave, I didn't know.

2 THE COURT: If they want to leave, they can leave.

3 MS. SHROFF: I see, okay. It was just a question.

4 THE COURT: They used to go out for smokes.

5 MS. SHROFF: What?

6 THE COURT: They used to go out for smokes.

7 MS. SHROFF: That's why I was asking what your rule
8 was.

9 THE COURT: If you want to smoke, that's okay with me.

10 MS. SHROFF: Okay.

11 THE COURT: Thank you.

12 (Recess pending verdict)

13 (At 3:04 p.m. a note was received from the jury)

14 THE COURT: Good afternoon. We have a note from the
15 jury. "One of the jurors has prior information of the
16 case/defendant that just surfaced. Can we please have someone
17 evaluate whether that information impacts her bias? It came up
18 during the course of deliberations and seems to be of relevance
19 to the evidence/lack of evidence." Signed at 2:55 p.m.

20 This will be our note what, David?

21 THE DEPUTY CLERK: 15.

22 THE COURT: Do the parties have any suggestions?

23 MR. KAMARAJU: Sorry, your Honor. We're just talking
24 it over. It's a bit of a thorny one. It's a little difficult
25 to evaluate without knowing which juror. And, yeah, what

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1 information, so we want to think about what the best way to
2 discern that --

3 MS. SHROFF: We can't hear you.

4 MR. KAMARAJU: We are trying to think of the best way
5 to elicit that information without intruding on deliberations.

6 MR. ZAS: Our suggestion would be since it's fairly
7 late in the day, this might be another time when we can each go
8 back and do a little bit of research, canvass, maybe send the
9 jury home. Because there are I think, as Mr. Kamaraju said,
10 there's delicate issues about getting into the substance of
11 their deliberations. So I think maybe caution advises maybe
12 breaking and letting us figure out, maybe we'll give something
13 in writing if we find any good answers to this.

14 THE COURT: All right. Would it be helpful to know
15 what juror? Or would that be a penetration of the
16 deliberations?

17 MR. KAMARAJU: I think if the plan is to -- if we
18 adopt the plan to just send them home, your Honor, it may make
19 sense to come up with something comprehensive and address the
20 problem all at once.

21 MS. SHROFF: Mr. Kamaraju, we cannot hear you so we
22 don't know what you said.

23 MR. KAMARAJU: I apologize.

24 THE COURT: He said essentially keep hands off, send
25 them home, and discuss and research the matter further so we

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1 can take it up at 9 o'clock tomorrow morning.

2 MS. SHROFF: That's what we think as well, your Honor.

3 MR. KAMARAJU: Yes, your Honor. I think that would be
4 our proposal at this point.

5 THE COURT: So call the jurors in and send them home.

6 MR. KAMARAJU: Yes. And your Honor, if you want to
7 give them the instruction you mentioned before, but call them
8 back in the morning and let us at least figure out what the
9 best approach would be.

10 MR. ZAS: I think we agree with that proposal.

11 THE COURT: Okay. This note may have overtaken --

12 MS. SHROFF: Can we just have one minute to figure out
13 if this instruction should be given?

14 MR. ZAS: I have a suggestion. Since they are not
15 going to deliberate anyway anymore today, the Court could just
16 postpone, make that decision in the morning. If they are going
17 to resume in the morning, the Court can then tell them to share
18 each other's views.

19 Our fear is any kind of instruction may cause whatever
20 this information in the new note is, we don't want that to be
21 further shared with the other jurors if it hasn't already been
22 aired. So I think the safest course is just to stop for today.

23 MR. KAMARAJU: That makes sense to us, your Honor.

24 THE COURT: Call the jury in.

25 (Jury present. Time noted 3:13 p.m.)

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1 THE COURT: We have your note which is sent at 2:55.
2 We got it at 3:05.

3 What we're going to ask you to do, because it's 3:15
4 and you go home at 4, we are going to ask you to suspend your
5 deliberations, take an early break, and go home. We'll resume
6 tomorrow morning at 9 a.m.

7 We ask all of you be punctual so we can start our
8 deliberations as close as possible to 9 o'clock. You all have
9 to be together to deliberate. So, try to be here by 9 o'clock
10 and we'll have an answer to you for this question.

11 Thank you very much and safe home.

12 (Jury excused. Time noted 3:14 p.m.)

13 THE COURT: Thank you. What time should we get
14 together tomorrow?

15 MR. LAROCHE: Whenever is convenient for the Court,
16 your Honor. We would be available whenever you want to start.

17 THE COURT: We'll start a little bit before 9.

18 MR. LAROCHE: Yes, your Honor.

19 MR. ZAS: That's fine with the defense, your Honor.

20 MS. SHROFF: What time did you want us, judge?

21 THE COURT: 8:30, 8:45.

22 MS. SHROFF: If the MCC can bring Mr. Schulte, that
23 would be fine.

24 THE COURT: Marshals?

25 THE MARSHAL: I've been getting him here about 8:30

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1 every morning.

2 MS. SHROFF: Whatever works for the Court is fine.
3 8:45?

4 THE COURT: 8:45 then.

5 MR. LAROCHE: That's fine, your Honor. Your Honor, we
6 might just suggest -- we don't know where tomorrow might go.
7 But it might make sense to notify potential alternates of the
8 need for them to come, so they might be available. I am just
9 making that suggestion in terms of the notification.

10 MS. SHROFF: I don't think so, your Honor. I think we
11 should see where this goes. I don't know if there is any
12 contact between the alternates and the sitting jury.

13 THE COURT: We told them not to have any contact, but
14 we haven't had any contact with them. So we don't know.

15 MS. SHROFF: I mean, I don't know. It could be
16 nothing. Maybe they remembered reading a newspaper. Who
17 knows, I don't know.

18 THE COURT: We don't know.

19 MS. SHROFF: Right.

20 THE COURT: Make that part of the issues we're going
21 to discuss tomorrow.

22 MS. SHROFF: Thank you, your Honor.

23 THE COURT: We're not going to do anything tonight,
24 right?

25 MS. SHROFF: No, your Honor.

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1 THE COURT: Hope everybody has a nice evening.

2 MS. SHROFF: You too, your Honor.

3 (At 3:21 p.m. a note was received from the jury)

4 THE COURT: We have another note from the jury. We
5 marked it as Court Exhibit 16. It came in at 3:16 p.m.

6 "(1) What happened to Schulte's computers and
7 workstation after he went to Bloomberg (after November 10)?

8 (2) When and where was Rufus's SSH key found? Was it found in
9 the home directory or was it found forensically?"

10 This came in an envelope marked "hopefully for
11 tomorrow."

12 MR. LAROCHE: Your Honor, the answer to the first
13 question --

14 THE COURT: The first one is the FBI has it.

15 MR. LAROCHE: Yes, the most that is in the record is
16 the stipulation.

17 MS. SHROFF: Well, I mean, what happened to Schulte's
18 computer -- work computer and workstation after he went to
19 Bloomberg, what does it say after -- no.

20 THE COURT: After November 10.

21 MS. SHROFF: So the answer is actually technically
22 different. After November 10, it stayed at the CIA. And it
23 was seized by the FBI during the course of the investigation.
24 But, what happened to it after November 10 is he left it intact
25 at the CIA. That's the answer.

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1 In fact, that's a part of the cross, that was the one
2 recross question for Mr. Leedom. He left his workstation
3 intact, which is why they were able to see that he had deleted
4 no logs from the workstation.

5 THE COURT: That he had done what?

6 MS. SHROFF: Deleted no logs from the workstation.

7 MR. LAROCHE: That's not responsive, your Honor. What
8 they are asking for is where did the computer go after
9 November 10. The only thing in the record is the stipulation
10 that says that it was seized by the FBI in March of 2017.

11 MS. SHROFF: That would be an inaccurate answer, and I
12 think there is evidence in the record that his computer station
13 was kept intact at the CIA. And it says after November 10. So
14 that means they are not just asking after he went to Bloomberg.
15 In fact, they are asking after he went to Bloomberg,
16 parentheses, after November 10, which is his last day at the
17 CIA.

18 THE COURT: We're not going to resolve this tonight.
19 I understand the debate.

20 Number two, Rufus's SSH key.

21 MR. LAROCHE: There is testimony from Mr. Leedom about
22 where that was found, and we can pull that testimony. "When"
23 there's nothing in the record.

24 MS. SHROFF: We can try and get some answers for the
25 Court in preparation for 8:45 tomorrow.

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1 THE COURT: Could you repeat that, Ms. Shroff?
2 MS. SHROFF: Sure. I said just to make everybody's
3 life easier, we can certainly try and work out answers for
4 court and come prepared.

5 THE COURT: The way you did last night.

6 MS. SHROFF: Yes. Hopefully better than that one.

7 THE COURT: It worked out pretty well.

8 All right. I'll see you at 8:45 tomorrow morning.
9 Have a good night.

10 (Adjourned until March 5, 2020 at 8:45 a.m.)

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